

P-999/CI-88-917ACCEPTING WITHDRAWAL OF PETITION, CONSOLIDATING DOCKETS
AND NOTICE AND ORDER FOR HEARING

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Barbara Beerhalter	Chair
Cynthia A. Kitlinski	Commissioner
Norma McKanna	Commissioner
Robert J. O'Keefe	Commissioner
Darrel L. Peterson	Commissioner

In the Matter of the Applications for
Authority to Provide Alternative Operator
Services in Minnesota

ISSUE DATE: December 16, 1988

DOCKET NO. P-999/CI-88-917

ORDER ACCEPTING WITHDRAWAL OF
PETITION, CONSOLIDATING DOCKETS
AND NOTICE AND ORDER FOR
HEARING

PROCEDURAL HISTORY

On April 28, 1988, Central Corporation (Central), a long distance reseller operating in 24 states, requested authority from the Minnesota Public Utilities Commission (the Commission) to offer operator-assisted resold long distance service for telephone calls originating and terminating in Minnesota. The service is used by the transient public through subscribers such as hotels, motels, and hospitals. Central provides these types of operator services: commercial credit card calls; operator station calls, including collect and third party billed calls; and person to person calls.

On July 8, 1988, the Minnesota Department of Public Service (Department or DPS) filed its Report of Investigation and Recommendation with the Commission, recommending that Central's application be denied because alternative operator services (AOS) do not serve the public interest. The DPS listed seven areas of concern: access to the providers of the service, consumer information, quality of service, emergency call handling, billing, customer complaint and refund procedure, and compliance with Minn. Stat. Sec. 237.11.

On July 18, 1988, Central responded to the DPS recommendation. The Department replied to this filing.

On May 26, 1988, Teleconnect Company (Teleconnect), a certified long distance carrier in Minnesota, filed a petition with the Commission proposing to establish operator services for its individual long distance service customers as well as for patrons of hotels, motels, hospitals and users of pay telephone service.

On July 12, 1988, the DPS filed its Report of Investigation and Recommendation with the

Commission, recommending approval of Teleconnect's request to provide operator services to its individual customers. However, the Department recommended that provision of operator services to hotels, motels, hospitals, and private pay telephones be disapproved until Teleconnect addresses the consumer concerns raised by the DPS. (These are the same concerns raised in the DPS recommendation on Central.)

Teleconnect filed a response to the DPS recommendation on July 19, 1988. The DPS replied to this filing.

On September 6 and 9, 1988, the DPS supplemented its filings.

On August 12 and 26, 1988, the Residential Utilities Division of the Office of the Attorney General (RUD-OAG) filed comments on the filings. The RUD-OAG supported the recommendations of the DPS and recommended that the Commission deny the applications of Central and Teleconnect. In the alternative, the RUD-OAG proposed that the Commission order a contested case to reveal and resolve the regulatory issues involved in the provision of AOS.

The Commission met on October 5, 1988 to consider the positions of the parties.

On October 26, 1988 the Commission issued its ORDER CONSOLIDATING DOCKETS AND NOTICE AND ORDER FOR HEARING in In the Matter of an Application for Certificate of Authority and Tariff Filing by Central Corporation, d/b/a Central Long Distance Corporation, for the Provision of Long Distance and Alternative Operator Services, Docket No. P-485/NA-88-241 and In the Matter of a Tariff Filing By Teleconnect Company to Introduce Operator Services and Rates, Docket No. P-478/M-88-359.

On November 9, 1988, the Department of Public Service (DPS or the Department) filed a Request for Clarification of the October 26, 1988 Order. The DPS asked the Commission to clarify that the contested case hearing would be a generic proceeding concerning all applications by AOS providers in Minnesota and not limited to the two companies named in the Order.

On November 14, 1988, Central filed a Motion for Withdrawal of Application for Certificate of Authority and Tariff Filing with the Commission.

FINDINGS AND CONCLUSIONS

The Commission will grant the DPS Request for Clarification.

In its October 26 Order the Commission ordered a contested case hearing to address whether operator services are in the public interest when offered in the manner requested by Central and Teleconnect. The hearing would also provide information for the Commission to determine if the service is subject to emerging competition as defined in Minn. Stat. § 237.59 (Supp. 1987).

The Commission acknowledges that Central has filed a motion to withdraw its application for authority to provide AOS and will allow Central to withdraw from this matter.

The Commission notes that in addition to Teleconnect's application, described above, the Commission has received applications for authority to provide AOS from the following companies: American Operator Services, Inc., d/b/a National Telephone Services (Docket No. P-482/NA-88-584); United States Transmission Systems (Docket No. P-460/M-88-528); Long Distance/USA, Inc. (Docket No. P-499/NA-88-858); International Telecharge, Inc. (Docket No. 479/M-88-381); Automated Communications, Inc. (Docket No. P-494/NA-88-625); and Elcotel LD*OS, Inc. (Docket No. P-3002/NA-88-320).

The Commission finds that a case-by-case approach to determine whether AOS is subject to emerging competition and in the public interest is not appropriate. The Commission finds that the filings listed above present substantially the same issues of fact and law and that a holding in one case may affect the right of parties in another case. The Commission will consolidate all requests for authority to provide AOS noted above. Consolidating these petitions is a more practical alternative from both an economic and a public interest prospective than conducting separate contested case proceedings for each. There are common issues that can best be addressed in a consolidated proceeding that will provide the broad public interest information needed to assess the impact alternative operator services may have on Minnesota telephone users. This generic proceeding will be subject to an 8 month statutory deadline under Minn. Stat. § 237.59 (Supp. 1987). Pursuant to that statute, the eight months will begin with the issuance of this Order.

For administrative convenience, the Commission has assigned a single, new docket number to this hearing proceeding. Based in part upon its resolution of the more general issues affecting all petitions, the Commission at the end of this proceeding will reach individual determinations on each petition.

In addition, the Department has given the Commission a list of other AOS providers who may intend to offer services in Minnesota. The DPS asked that those companies be notified of this proceeding and be placed on the official service list. Those companies are: US Long Distance; Tel Com International; American Telenet Systems, Inc; Opti-Net; PAMTEL Long Distance; Tel-Share; Texas Telecom; Total Access Communications; and American Telecommunications Corp. The Commission will notify these companies of this proceeding and include them on the official service

list for this docket.

As the Commission stated in its October 26 Order, whether to grant or deny the requests of the companies for authority to provide operator assisted long distance services in Minnesota is a question which requires a determination of the public convenience and necessity. To decide that question, however, the Commission must decide whether AOS is a noncompetitive service and, therefore, subject to the public convenience and necessity standards of Minn. Stat. § 237.16 (1986) or whether it is classified as a competitive service under Minn. Stat. § 237.59 (Supp. 1987).

The DPS and the RUD-OAG have argued that AOS is not subject to emerging competition, while Teleconnect has argued that it is. On the facts before it, the Commission is unable to determine whether in fact AOS is emergingly competitive, and thus qualifies for regulation under Minn. Stat. § 237.57 to 237.60 (Supp. 1987).

Under Minn. Stat. 237.59, subd. 2 (Supp. 1987), the Commission on its own motion may order a contested case hearing to determine whether a telephone service can be classified as subject to effective or emerging competition.

Issues to be Addressed

Minn. Stat. Sec. 237.59, subd. 5 (Supp. 1987) lists factors to consider in determining whether a service is subject to either effective competition or emerging competition. They are:

1. the number and sizes of alternative providers of service and affiliation to other providers;
2. the extent to which services are available from alternative providers in the relevant market;
3. the ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms, and conditions of service;
4. the market share, the ability of the market to hold prices close to cost, and other economic measures of market power; and
5. the necessity of the service to the well-being of the customer.

The statute further states that for the Commission to find a service subject to effective competition, alternative services must be available to over 50 percent of the company's customers for that service; to find the service subject to emerging competition, alternative services must be available to over 20 percent of the company's customers.

Further, the burden of proof is on the company to prove that competition exists and that classifying the service as other than noncompetitive will serve the public interest.

In addition, to aid the Commission in determining whether rate regulation of AOS providers is necessary to protect the interest of consumers and whether the benefits of rate regulation outweigh the burdens of rate regulation, the Commission will direct the parties to this proceeding to address the following issues:

1. Are end-users a captive market to AOS providers?
2. Can end-users make an informed economic decision based on information available to them?
3. Does the provision of the service meet industry standards?
4. Do the company's procedures provide for the handing off of emergency calls to the local government entity handling 911 calls or to the local exchange operator?
5. How are calls billed? If AOS charges are billed through local exchange companies, can local companies disconnect service due to nonpayment of AOS charges?
6. What is the company's procedure for customer complaints and refunds?
7. Has the company complied with Minn. Stat. Sec. 237.11 re keeping an office in the state?
8. Do operator services as proposed constitute telephone switching or any other function for which certification is required regardless of the intended destination of the calls?

Procedural Outline

The hearing on the companies' petitions will be conducted by an Administrative Law Judge appointed by the Chief Administrative Law Judge of the State of Minnesota and will be held in compliance with the applicable laws relating to the Public Utilities Commission, the contested case provisions of the Administrative Procedure Act (Minn. Stat. Ch. 14), the Rules of the Office of Administrative Hearings, Minnesota Rules, parts 1400.5100 - 1400.8400, and the Rules of Practice of the Public Utilities Commission, Minnesota Rules, parts 7830.0100 - 7830.4400, to the extent that they have not been superseded by the Rules of the Office of Administrative Hearings.

These statutes and rules may be purchased from the Documents Section of the Department of Administration, 117 University Avenue, St. Paul, Minnesota 55155, 612/297-3000.

The rules provide generally for the procedural rights of the parties including: rights to advance notice of witnesses and evidence, right to a prehearing conference, rights to present evidence and cross examine witnesses, and rights to purchase a record or transcript. Parties are entitled to issuance of subpoenas to compel witnesses to attend and produce documents and other evidence pursuant to Minnesota Rules, part 1400.7000.

Interested persons or groups may petition to intervene as formal parties in the case to present expert testimony and submit briefs. The Administrative Law Judge will hold evidentiary hearings for the presentation of expert testimony by the Company, the Minnesota Department of Public Service, and other agencies, persons, or groups who have formally intervened. Parties are advised to bring to the hearing all documents, records and witnesses they need to support their position. During the evidentiary hearings. All parties may present evidence and argument regarding the issues and may cross-examine witnesses.

Any person intending to intervene as a formal party to these hearings must submit a petition for Leave to Intervene to the Administrative Law Judge and serve the petition on all existing parties. The petition must state how the Petitioner's legal rights, duties or privileges may be determined or affected by the Commission's decision in the matter and shall set forth the grounds and purposes for which intervention is sought, and shall indicate the Petitioner's statutory right to intervene, if one exists. All parties have the right to be represented by an attorney, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law.

A Notice of Appearance (ATTACHMENT A) must be filed with the Administrative Law Judge within 20 days of the date of service of this Order if any party intends to appear at the hearing. The Notice of Appearance is not required if the hearing date is less than 20 days from the issuance of this Order.

The time, date, and place of the contested case hearing shall be set by order of the Administrative Law Judge after consultation with the Commission and intervening parties. Unless approved by the Chief Administrative Law Judge, the contested case hearings shall not be scheduled to begin less than 30 days from service of this Notice and Order for Hearing. The Chief Administrative Law Judge may shorten the 30 day period if shown that a shorter time is in the public interest and that interested persons are not likely to be prejudiced by this action.

A prehearing conference shall be held at 1:00 p.m. on Friday, January 6, 1989 in the Large Hearing Room, 715 American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota 55101. Potential intervenors are encouraged to attend the prehearing conference. Potential intervenors shall attend the prehearing conference scheduled below with information which will facilitate the scheduling of hearings permitting all of the parties to present their evidentiary views in a manner and within a time frame which would be as fair and expeditious as possible. Matters which may be discussed include: the reasonable time period required to prepare direct testimony for filing on all issues, time required for parties to prepare for depositions and other discovery and other matters that will facilitate full and fair hearings on the petition.

If persons have good reason for requesting a delay of any hearing, the request must be made in writing to the Administrative Law Judge at least five days prior to the hearing. A copy of the request must be served on the Commission and all parties.

Failure to appear at the hearing may result in facts and issues being resolved against the party who fails to appear.

Parties are advised that if data classified as not public are admitted into evidence, they may become public data unless a party objects and asks for relief under Minn. Stat. § 14.60, subd. 2 (1986).

Any question concerning informal disposition of this matter pursuant to Minnesota Rules, part 1400.5900 or discovery of information pursuant to Minnesota Rules, parts 1400.6700 and 1400.6800, should be addressed to Jon Kingstad, Special Assistant Attorney General, 780 American Center Building, St. Paul, Minnesota 55101, 612/296-0413.

All other questions concerning this hearing should be addressed to the Administrative Law Judge assigned:

Allan W. Klein
Office of Administrative Hearings
400 Summit Bank Building
310 South 4th Avenue
Minneapolis, Minnesota 55415

The lobbying provisions of Minn. Stat. Chapter IOA apply to general rate cases. If the document that a person files pertains to ratemaking, rulemaking, certificates of need for large energy facilities or contested case rate proceedings, the person may be required to register with the Minnesota Ethical Practices Board under the lobbying provisions of Minn. Stat. Ch. IOA. Lobbying includes attempting to influence administrative action in rulemaking proceedings, certificate of need cases or contested ratemaking cases. An individual who is engaged for pay or authorized by another individual or association to spend money and who spends more than five hours in any month or more than \$250 in a year to influence administrative action must register with the Board and report disbursements for lobbying purposes, including preparation and distribution of lobbying materials, telephone, postage, media advertising, travel and lodging. The statute provides certain exemptions, including an exception applicable to expert witnesses delivering testimony. Persons are encouraged to telephone the Board at 612/296-1720 for additional information.

ORDER

1. A contested case hearing concerning this matter shall be held commencing with a Prehearing Conference at 1:00 p.m. on Friday, January 6, 1989 in the Large Hearing Room, 715 American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota 55101. Hearing dates will be set by Order of the Administrative Law Judge.
2. Docket Nos. P-478/M-88-359, P-482/NA-88-584, P-460/M-88-528, P-499/NA-88-858, P-479/M-88-381, P-494/NA-88-625, and P-3002/NA-88-320 shall be consolidated for the purpose of the contested case proceeding described in Ordering Paragraph 1 above.
3. All parties shall furnish adequate responses with 10 days to all reasonable information requests from other parties.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Mary Ellen Hennen
Executive Secretary

(S E A L)

ATTACHMENT A

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

400 Summit Bank Building
310 South Fourth Avenue
Minneapolis, Minnesota 55415

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

780 American Center Building
160 East Kellogg Boulevard
St. Paul, Minnesota 55101

In the Matter of the Applications for
Authority to Provide Alternative Operator
Services in Minnesota

MPUC Docket No. P-999/CI-88-917

OAH Docket No.

NOTICE OF APPEARANCE

Date of Hearing:

Name and Telephone Number of Administrative Law Judge:

Allan W. Klein
612/341-7609

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER:

SIGNATURE OF PARTY OR ATTORNEY: _____

DATE: _____